

Report to Wellington Regional Council
from Lloyd Bezett, Policy Analyst

REMOVAL OF WRECK

1. Purpose

To advise on the procedure for the removal of the wreck, *Sarfaq* under section 650K of the Local Government Act 1974 (LGA).

2. Background

2.1 “Sarfaq”

Councillors may be aware of an incident in the weekend concerning a derelict fishing trawler, the *Sarfaq*, moored at Miramar Wharf. Officers of the Harbours Department together with members of the local fire brigade were called to pump out the *Sarfaq* after a member of the public noticed that it was lying low in the water. Attachment 1 shows photographs of the *Sarfaq*.

The *Sarfaq*, owned by Carp Investments Ltd (in liquidation), has been an unsightly feature of Wellington Harbour for some time, having previously been tied up outside Te Papa Tongarewa. There being apparently no prospects of profitable employment, the owner decided to "cannibalise" the ship. In May 1998 the trawler *James Cook* was fitted with the *Sarfaq's* trawling winches and electronics. The main engine, reduction gear, shaft alternator, tailshaft and propeller were also sold.

2.2 Resource Consent Application for use as Diving Site

The Council has previously received two resource consent applications to scuttle the *Sarfaq* for recreational diving purposes at Mana Island and Island Bay respectively. The proposal for Mana Island has been withdrawn, while the application for Island Bay has been on hold since July 2000, to enable the applicant time to consult with relevant fishing and boating interests. In addition, the applicant was required to show how it intended to deal with the discovery of the invasive seaweed *Undaria* on the *Sarfaq's* hull.

It should be noted that considerable modifications are required to ensure that a ship such as the *Sarfaq* is safe for recreational diving purposes.

2.3 Danger to navigation and safety

The ship presents a significant navigation hazard. On two occasions the ship has broken its moorings and run aground in Evans Bay. In addition, holes have been cut in the decking and bulkheads, exposing the holds to the elements, increasing the risk of sinking. If the ship was to sink it would present a significant navigation hazard, obstructing access to the wharf and present a danger that other ships could unwittingly run into it (it would not be visible at certain tides). It was the combination of rainwater entering the hold and the general derelict state of the ship, which lead to it almost sink at its mooring at the weekend.

The *Sarfaq* is also dangerous in its current derelict condition. Vandals have been able to gain illegal access to the ship and fires have been lit onboard. It therefore poses both a fire hazard as well as a potential hazard to children who may gain access. It is also a potential source of oil pollution, should it sink in its current condition.

2.4 Disposal of Ship

It is necessary for the Council to consider this matter, as there are no specific delegation to the Harbourmaster with regard to the disposal of wrecks. It is preferable for Council to take action under the Local Government Act (primary legislation) rather than the Wellington Regional Navigation and Safety Bylaws 2001.

Section 650K of the Local Government Act 1974 (LGA) specifies the powers of the Council in relation to the removal of a wreck. A wreck is defined as:

- “(a) *Any ship or aircraft which is abandoned, stranded, or in distress, or any equipment or cargo or other articles belonging to or separated from any such ship or aircraft; and*
- (b) *Any derelict ship; and*
- (c) *Shipping containers and property lost overboard or similarly separated from a ship, other than cargo lost in the course of its unloading or discharge from the ship while the ship is in a port.”*

The Oxford Dictionary defines “derelict” as: “abandoned, left to fall into ruin [especially of ship at sea or decrepit property]”. It is officers’ opinion that the *Sarfaq* falls within the definition of wreck by virtue of being a derelict ship.

Section 650K(2) specifies that the following procedures must be taken if Council decides to remove and deal with a wreck presenting a hazard to navigation:

- “(a) *The council must, by a written request addressed to the owner of the wreck, or to an agent of the owner, ask the owner to either—*
- (i) *Remove the wreck within the time specified in the request and in a manner satisfactory to the council; or*
- (ii) *Undertake, under a security satisfactory to the council, to remove the whole of the wreck within a time fixed by and in a manner satisfactory to the council:*

- (b) *If the owner or agent cannot be found, or fails within the time specified in the written request to remove the whole of the wreck in a way satisfactory to the council, or to enter into such an undertaking to remove the wreck, or having undertaken to remove the wreck, fails to remove it in accordance with that undertaking, the council may, if the council has made reasonable inquiries to find the owner or agent, remove the wreck, and may recover from the owner, in any court of competent jurisdiction, the expenses incurred in removing it ('the expenses of removal'):*
- (c) *The council may, for the purpose of removal, destroy the wreck or any part of it, and may remove and take possession of the wreck or any part of it, and may sell the wreck or any part of it; and may, out of the proceeds (if any) of the sale, without any reference to the part of the wreck from the sale of which those proceeds may accrue, reimburse itself for the whole of the expenses of removal, and must after reimbursing itself pay over the surplus (if any) to the owner:"*

3. Comment

3.1 Method of disposal

It is understood that the owner has previously sought and obtained from the Maritime Safety Authority (MSA) a permit to sink the ship outside the 12-mile territorial sea; this permit has lapsed. Given the condition of the ship, it is the Harbourmaster's view that sinking it is the only practical method of disposal. The views of the MSA have been sought and it has confirmed that a new permit could be issued in a very short time frame. A dumping permit issued by an external authority provides a degree of impartiality.

As noted above, resource consent applications to sink the *Sarfaq* as a recreational dive site have been lodged with the Council. Unfortunately, the ship's condition has deteriorated to such an extent that any further delay in its disposal poses an unacceptable risk of it sinking at its berth.

3.2 Proposed course of action

3.2.1 *Removal by owner, liquidator or mortgagee*

Given the current doubt as to the legal ownership of the *Sarfaq*, it is proposed that the Council write to the owner, the liquidator and the mortgagee requesting that the *Sarfaq* be removed from the waters within the Wellington Region within a period of two weeks.

The Harbourmaster has advised that the proposed two-week time period is reasonable and will allow oil and other contaminants to be removed from the ship prior to its disposal by sinking. Council officers intend to liaise the liquidator to assist their preparations for removal. The weather forecast on 1 August 2001 issued a gale

warning for the Wellington area. In view of this United Environmental Limited has been engaged by the Harbours Department to remove most of the oil off the ship.

However, given that the owner is in liquidation it is anticipated that none of the responsible parties will be in a financial position to remove the *Sarfaq* or to carry out the necessary preparatory work.

3.2.2 *Removal by the Council*

If the *Sarfaq* has not been removed at the completion of the two-week period, the Council will then take steps to remove and dispose of the wreck and seek to recover its costs.

The MSA has advised that a permit may be conditional on the ship being sunk in waters exceeding 2000 metres in depth; suitable sites on the Wellington coast depth are beyond the 12-mile limit and therefore fall within the MSA's jurisdiction. It may be possible to dispose of the ship in the designated explosives dump south of Baring Head, straddling the 12-mile limit. This is the site where munitions were dumped following World War II. While only 1700 metres deep it has the advantage of locating waste in one place thereby limiting the environmental impact. In addition an explosive dumpsite is not an area where bottom trawling by fishing vessels can take place.

As the jurisdiction of the Regional Council ends at the 12-mile limit a resource consent application will not be necessary. The MSA permit procedure requires consultation with the Department of Conservation and the Ministry of Fisheries. To some extent this consultation process parallels that required under the RMA ensuring appropriate environmental safeguards.

Any permit from the MSA will require the oil to be removed prior to removal. It is not anticipated that *Undaria* will need to be cleaned from the hull, as it is a coastal, light-dependant, seaweed that will not survive in deep waters.

3.3 **Costs and Insurance**

It is the Harbourmaster's view that it is unlikely that costs will be recoverable from the owner for the *Sarfaq*'s removal. Current estimates of costs for cleaning, towing and the sinking of the *Sarfaq* are approximately \$25,000. The Council does maintain insurance cover for the removal of wrecks under section 650K LGA. However, the excess on this policy is currently \$100,000 (cover being primarily intended for large salvage operations).

3.4 **Communications**

In view of the publicity surrounding the near sinking of the *Sarfaq* at the weekend, the Council's proposed action is likely to be a matter of public interest. A press release and a media plan will be instigated.

3.5 Future Delegations

As stated at the beginning of this Report, there are no existing delegations that allow the Harbourmaster to proceed with the removal of a wreck without the approval of the Council. It is proposed that officers report to a future meeting of the Council on the granting of such delegations.

4. Recommendation

That Council:

- (1) *writes to the owner and mortgagee of the Sarfaq and liquidator of Carp Investments Ltd requesting that the ship be removed from the waters of the Wellington Region within two weeks as it constitutes a hazard to navigation.*
- (2) *authorizes, in the event that the request to remove the Sarfaq is not complied with:*
 - (a) *the Harbourmaster to apply to the Maritime Safety Authority for a permit of disposal of the Sarfaq,*
 - (b) *the Harbourmaster to carry out such measures as are necessary, in compliance with a permit of disposal, to put the Sarfaq in a condition suitable for disposal,*
 - (c) *the Harbourmaster to dispose of the Sarfaq in compliance with a permit of disposal and to enter into such contracts or agreements as are necessary to allow him to do so.*
 - (d) *officers to take the necessary actions to recover the Council's cost.*
- (3) *notes that a separate report will be made concerning an appropriate delegation to the Harbourmaster to proceed with removal of a wreck.*

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